IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.421 OF 2006
WITH
CIVIL APPLICATION NO.508 OF 2006

Smt.Anju Agrawal. ..Appellant.

V/s.

The Municipal Corpn. for Gr.Bombay. ..Respondent.

Mr.S.K.Dubey for appellant.

Mrs. Geeta Joglekar for BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 28, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mrs.Joglekar waives notice for respondent.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. This appeal from order takes exception to the Judgment and order passed by the City Civil Court, Bombay dated 12th June, 2006 in Notice of Motion No.2257 of 2006 in S.C.Suit No.2565 of 2006. By this

order, the Trial Court has refused to grant ad-interim relief. The principal reason assigned by the trial Court is that the Appellant has failed to produce any document to show that the structure is constructed after prior permission of the Corporation as per the sanctioned plan of the Corporation. Indeed, that opinion recorded by the Court may be appropriate. However, lower Court has not appreciated the documents, which are pressed into service on behalf of the appellant amongst other, letter issued under the signature of Executing Engineer of MHADA dated 20th February, 1996 which, as contended by the appellant, would indicate that the appellant was in occupation of the suit plot, which observation presupposes that the structure was existing prior to 1996. The existence of structure is also sought to be buttressed on the basis of letter issued by the Deputy Engineer MHADA on 2nd April, 1996 and possession receipt dated 6th February, 1996. The case of the appellant is that the plot in question was allotted to the appellant's husband and appellant is enjoying the said property alongwith other family members. For the present, suffice it to observe that case for ad-interim relief is made out. Hence, impugned order is set aside, instead the ad-interim order, which was granted on

16th June, 2006 by this Court requiring the parties to maintain status quo with regard to the suit structure, shall continue till the disposal of the Notice of Motion. Notice of Motion be decided on its own merits in accordance with the law, uninfluenced by any observation in the impugned order or for that matter this order.

6. It will be open to the parties to complete pleadings on or before 17th July, 2006, so that the Notice of Motion can be heard and disposed of on the next date of hearing, scheduled as 30th August, 2006 or such other date as may be convenient to the trial Court.

7. Parties through Counsel assures to complete pleadings in the Notice of Motion within specified time.

8. Appeal as well as civil application disposed of on the above terms.